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SUMMARY RECORD OF THE 62nd MEETING

Chairman: Mr. SENGWE (Zimbabwe)

Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. MSELLE

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 140: ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF UNITED NATIONS PEACEKEEPING OPERATIONS (continued) (A/48/622, A/48/912, A/49/654, A/49/936, A/50/797, A/50/907, A/50/965, A/50/976, A/50/983, A/50/985, A/50/995, A/50/1009, A/50/1012, A/51/389, A/51/491, A/51/646, A/51/778, A/51/845, A/51/892, A/C.5/50/51, A/C.5/51/8, A/C.5/51/45 and A/C.5/51/48)

1. Ms. PEÑA (Mexico) said that her delegation reiterated its support for the principles laid down in General Assembly resolution 1864 (XVII) regarding the financing of peacekeeping operations, and for the way in which those principles had been applied since the adoption of General Assembly resolution 3101 (XXVIII). It believed that the special scale of assessment for peacekeeping operations should be institutionalized, and could not support the proposals put forward by the European Union and the United States of America. Her delegation had not heard any convincing arguments which would justify making changes in the scale and especially reducing the financial burden of some of the permanent members of the Security Council. It could not support any initiatives which would have the effect of transferring financial burdens from the developed to the developing countries.

2. Ms. GURAY (Turkey) said that her delegation fully supported the statements made earlier in the debate by Colombia, on behalf of the Movement of Non-Aligned Countries, Pakistan, and the United Republic of Tanzania, on behalf of the Group of 77 and China, about death and disability compensation, and agreed that the current system was discriminatory and unjust. It believed that there should be equal treatment for all Member States.

3. Mr. DOSSAL (Chief, Finance Management and Support Service, Department of Peacekeeping Operations), recalled that at the 60th meeting, the representative of the Netherlands, on behalf of the European Union, had asked whether inland transportation claims for periods for which Member States had opted for reimbursement under the old system were being processed according to the old methodology. He drew attention to paragraph 25 of document A/50/807, which stated that "under the current system, inland transportation to the point of embarkation is not normally reimbursed". Under the transitional arrangements, following the General Assembly's decision to implement the new procedures effective 1 July 1996, the Secretariat was receiving claims for reimbursement of inland transportation costs, subject to the normal verification procedures. While no claims had been processed or reimbursed since the introduction of the new system, clarification was needed about the issue of entitlement to inland transportation under the old system, in particular as to whether or not inland transportation was to be reimbursed under the old system as well as under the new system as of 1 July 1996. He requested clarification from the Committee in that regard.

AGENDA ITEM 120: HUMAN RESOURCES MANAGEMENT (continued) (A/C.5/51/49 and A/51/893)

4. The CHAIRMAN recalled that the Committee had reviewed the letter dated 15 May 1997 from the Secretary-General addressed to the President of the General

Assembly (A/51/893) concerning the implementation of General Assembly resolution 51/226 on human resources management. He wished to propose the following draft decision:

"The Fifth Committee

"Requests the Chairman of the Committee to inform the President of the General Assembly that it reaffirms General Assembly resolution 51/226 of 3 April 1997 on human resources management and requests the Secretary-General to implement that resolution, as adopted."

5. He took it that the Committee wished to adopt the draft decision.

6. It was so decided.

7. Mr. MADDENS (Belgium) said that in a spirit of consensus, his delegation had agreed not to include references to the Financial Regulations and the Staff Regulations in the draft decision, because those references would only confirm what was clear, namely that the Secretary-General would apply General Assembly resolutions in strict conformity with the rules in force, and that he would go to the General Assembly if it was necessary to make adjustments to the rules. In the case of General Assembly resolution 51/226 it was his understanding that no changes to the Financial Regulations or the Staff Regulations were necessary and that the resolution would be implemented in application of those rules.

8. Ms. SHENWICK (United States of America) said that her delegation reaffirmed its understanding that the decision just adopted did not affect the implementation of General Assembly resolution 51/226 and that that resolution did not curtail the authority of the Secretary-General to enter into short-term contracts pursuant to existing financial and human resource regulations, assuming that there were management needs and that funding was available for the purpose. It was also her delegation's understanding that other paragraphs of General Assembly resolution 51/226 pertained to positions that were vacant on the effective date of the resolution, i.e. 3 April 1997.

9. Mr. SAHA (India) said that his delegation had no difficulty in agreeing that General Assembly resolution 51/226 should be implemented in its letter and spirit. However, the Secretariat must be absolutely clear about the implementation of the resolution. He requested clarification as to whether paragraph 26 of the resolution applied to support account posts. Furthermore, paragraph 26 referred to short-term appointments of one year or more, although short-term appointments normally meant appointments of staff under the 300 series of the Staff Rules, and such appointments were for up to six months. The resolution was imprecise in that respect.

10. His delegation firmly believed that the provisions of General Assembly resolution 51/226 applied only prospectively. It therefore noted with grave concern that although the Secretary-General himself had requested that the provisions of paragraph 26 of the resolution should be applied prospectively to support account posts, the Office of Human Resources Management had issued memoranda to various departments of the Secretariat indicating that the provisions of the resolution were retrospective and, more specifically, that

they placed limits on the granting of short-term appointments or fixed-term appointments for less than one year and prohibited the regularization of staff on short-term appointments. He did not understand why the concept of fixed-term appointments of less than one year had been included in the memoranda, and requested clarification from the Secretariat as to what had prompted it to use that erroneous interpretation.

11. His delegation also feared that paragraph 27, which referred to peacekeeping and other field missions, would be interpreted incorrectly. His delegation's understanding was that the paragraph referred to peacekeeping missions irrespective of duty station. He requested the Chairman to seek clarification from the Secretariat and to impress on the Secretariat the need to interpret the provisions of General Assembly resolution 51/226 in the spirit in which they had been adopted by the General Assembly.

12. Mr. MOKTEFI (Algeria) said that his delegation reaffirmed that General Assembly resolution 51/226 applied from 3 April 1997 and could not have a retroactive impact.

13. Ms. RODRÍGUEZ ABASCAL (Cuba) said that her delegation supported the Committee's decision on the understanding that the Secretariat would in no way apply General Assembly resolution 51/226 retroactively and would abide by the spirit and letter of the resolution.

14. Mr. HANSON (Canada) said that the decision just adopted was in many ways a statement of the obvious. It was understood that no part of General Assembly resolution 51/226 could be applied with retrospective impact and that the resolution must be implemented in full compliance with the Staff Rules and Regulations and other regulations, with due regard for the case law of the Administrative Tribunal.

15. Mr. STÖCKL (Germany) said that General Assembly resolutions had to be implemented in accordance with the existing law of the Organization, including the Staff Rules and Regulations and the Financial Regulations, and also with the jurisprudence of the Administrative Tribunal. The decision did not mean that the Committee took note of or supported the interpretation made by the Secretary-General in the letter to the President of the General Assembly (A/51/893).

16. Mr. YUSSUF (United Republic of Tanzania) said that his delegation had joined in the consensus on the Committee's decision on condition that General Assembly resolution 51/226 would not be applied retroactively.

17. Ms. PEÑA (Mexico), supported by Mr. MOKTEFI (Algeria), said that the Secretariat should confirm that General Assembly resolution 51/226 would be applied non-retroactively and in accordance with the letter and spirit of its provisions.

18. Mr. HALLIDAY (Assistant Secretary-General for Human Resources Management) confirmed that the Secretary-General would implement General Assembly resolution 51/226 with effect from 3 April 1997, consistent with the rules and regulations relating to financial and human resources and in keeping with the jurisprudence

of the Administrative Tribunal. The Secretary-General's concern was that there would be a retroactive impact on certain staff members, particularly those hired under support account arrangements.

19. His understanding of paragraph 26 of General Assembly resolution 51/226 was that it specifically included support account posts. The Secretariat had used the definition of short-term appointments which it had used for many years in reporting to the General Assembly as meaning appointments for less than one year. That was different from the definition of short-term appointments under the 300 rules as meaning appointments for up to six months, with a possibility of extension to nine months.

20. The Secretariat had issued a memorandum on 9 May 1997 in order to make a start on the implementation of General Assembly resolution 51/226. It was concerned about the immediate impact of the resolution on staff who were not on the support account but were in established posts on a short-term basis, and the purpose of the memorandum was to prepare departments for the implications of the resolution, so that it would be possible to move quickly to free up opportunities for placement of national competitive examinees whose names were on the roster.

21. Ms. SHENWICK (United States of America) said that it was very odd that the issue of retroactivity had arisen, because there was nothing in General Assembly resolution 51/226 to indicate that the resolution was to be applied retroactively. There was no question of going back and undoing contracts drawn up or appointments made prior to 3 April 1997 that might not now be compatible with that resolution. Posts which had been vacant effective 3 April 1997, including support account posts, must be filled with candidates who met all the relevant criteria, in accordance with paragraph 26 of the resolution. There was no issue of retroactivity; the General Assembly was going to be appropriating money, not for prior periods, but for the future.

22. Ms. PEÑA (Mexico) said that her delegation had taken note of the replies provided by the Assistant Secretary-General, and was pleased to note that the provisions of resolution 51/226 would be implemented prospectively rather than retroactively. However, it was curious to know why the Assistant Secretary-General had merely said that the Secretariat would comply with existing staff rules and regulations and had not explicitly stated that the measures would be implemented in accordance with the letter and spirit of the resolution.

23. Mr. SAHA (India) said that he was pleased to hear that the resolution would not be applied retroactively. Nevertheless, the Secretariat had failed to address the main thrust of his question as to why the category of short-term appointments had been extended to take in fixed-term appointments of less than one year. If the Secretariat was experiencing difficulty in interpreting any of the provisions of resolution 51/226, it should seek guidance from the Office of Legal Affairs or ask the Fifth Committee for a fresh mandate. On no account should the Secretariat apply its own interpretation.

24. Regarding paragraph 27 of resolution 51/226, he was aware that various delegations held differing interpretations, but consensus had none the less been reached. His delegation feared that an erroneous interpretation of what was

meant by short-term and fixed-term appointments would undermine the provisions contained in that paragraph. Accordingly, the Secretariat should share its interpretation with the Fifth Committee. His delegation understood the term "peacekeeping" in the generic sense, as meaning all staff members involved in peacekeeping activities irrespective of location. The reference to "other field missions" implied all other missions, such as those in the humanitarian field. The matter had been raised repeatedly in informal consultations, where the view had been taken that rotation between Headquarters and the field would greatly benefit the Organization.

25. Mr. STÖCKL (Germany) said that the meaning of paragraph 27 was clear, namely that staff serving in peacekeeping missions and other field missions away from Headquarters would be eligible to apply for internal vacancies. The paragraph had to be read in conjunction with the other provisions of the resolution which were designed to ensure that individuals holding other types of short-term appointment did not have an undue advantage when applying for regular posts at the United Nations.

26. Ms. SHENWICK (United States of America) endorsed the interpretation put forward by the representative of Germany. Paragraph 27 had been formulated to provide a non-cash incentive to staff serving the Organization in difficult conditions away from Headquarters.

27. Mr. HALLIDAY (Assistant Secretary-General for Human Resources Management) said that he wished to clarify that vacant support account posts would be processed in the normal way through full appointment and promotion procedures. Regarding the concern raised by the representative of Mexico, he regretted having given the impression that the Secretary-General intended to implement resolution 51/226 in anything but the spirit in which it had been elaborated. With reference to the comments made by the representative of India, he said that the Secretariat had always used the definition "short-term appointment" to mean those staff members who had been brought into the United Nations for less than 12 months and who had not been required to go through the normal recruitment process. That had also been the interpretation used by the Office of Legal Affairs in advising the Secretary-General on the wording of his recent letter to the President of the General Assembly (A/51/893). As far as paragraph 27 was concerned, he understood the paragraph to refer to "peacekeeping field missions and other field missions". Member States had wished to enable those serving the Organization in difficult field conditions to be considered for posts in New York or other duty stations after at least 12 months of good performance.

28. Mr. SAHA (India) referred the Assistant Secretary-General to staff rules 301.1 to 312.6 inclusive contained in document ST/SGB/Staff Rules/3/Rev.5 dated 1 January 1994, which governed appointments for service of a limited duration. Those rules contained a definition of short-term appointments in the 300 series for a period not exceeding six months, but no definition of short-term appointments in the 100 series. His delegation requested the Office of Legal Affairs to inform him whether that interpretation was correct.

29. Mr. HALLIDAY (Assistant Secretary-General for Human Resources Management) said that he would prefer to consult the Office of Legal Affairs before responding to the question from the representative of India.

The meeting rose at 4.15 p.m.